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Total Number of Pages in This Submission

Application Number 09/681,172

Filing Date FEBRUARY 8, 2001

First Named Inventor KENNETH A. FRANKEN

Art Unit 2174

Examiner Name P. KE

Attorney Docket Number 00F1464

ENCLOSURES (Check all that apply)

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| <input checked="" type="checkbox"/> Fee Transmittal Form | <input type="checkbox"/> Drawing(s) | <input type="checkbox"/> After Allowance Communication to TC |
| <input type="checkbox"/> Fee Attached | <input type="checkbox"/> Licensing-related Papers | <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences |
| <input type="checkbox"/> Amendment/Reply | <input type="checkbox"/> Petition | <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) |
| <input type="checkbox"/> After Final | <input type="checkbox"/> Petition to Convert to a Provisional Application | <input type="checkbox"/> Proprietary Information |
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Remarks

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	SIMMONS PERRINE ALBRIGHT & ELLWOOD, P.L.C.		
Signature			
Printed name	GREGORY G. WILLIAMS		
Date	OCTOBER 25, 2005	Reg. No.	31,681

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Typed or printed name	MARIAN PALMERSHEIM	Date	OCTOBER 25, 2005

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FEE TRANSMITTAL

For FY 2005

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 250.00

Complete if Known

Application Number	09/681,172
Filing Date	FEBRUARY 8, 2001
First Named Inventor	KENNETH A. FRANKEN
Examiner Name	P. KE
Art Unit	2174
Attorney Docket No.	00F1464

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FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description

Each claim over 20 (including Reissues)

Fee (\$)
50

Small Entity Fee (\$)
25

Each independent claim over 3 (including Reissues)

200

100

Multiple dependent claims

360

180

Total Claims

Extra Claims

Fee (\$)

Fee Paid (\$)

- 20 or HP = _____ x _____ = _____

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims

Extra Claims

Fee (\$)

Fee Paid (\$)

- 3 or HP = _____ x _____ = _____

HP = highest number of independent claims paid for, if greater than 3.

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets

Extra Sheets

Number of each additional 50 or fraction thereof

Fee (\$)

Fee Paid (\$)

- 100 = _____

/ 50 = _____

(round up to a whole number) x _____ = _____

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Fees Paid (\$)

Other (e.g., late filing surcharge): FEE FOR FILING APPEAL BRIEF

\$250.00

SUBMITTED BY

Signature

Registration No.
(Attorney/Agent) 31,681

Telephone 319-887-1368

Name (Print/Type) GREGORY G. WILLIAMS

Date OCTOBER 25, 2005

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND
INTERFERENCES

In re Application of:

Kenneth A. Franken et al.

Application No: 09/681,172

Filed: February 8, 2001

For: INDIVIDUALIZED
CONTENT GUIDE

Commissioner for Patents
P. O. Box 1450
Alexandria, Virginia 22313-1450

§ Group Art Unit: 2174
§
§ Examiner: P. Ke
§
§ Attorney Docket: 00F1464
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§

APPLICANTS' BRIEF ON APPEAL TO THE BOARD

Gregory G. Williams
Reg. No. 31,681

Simmons Perrine Albright & Ellwood, PLC
Third Floor Tower Place
22 South Linn Street
Iowa City, Iowa 52240
Telephone (319) 887-1368
Facsimile (319) 887-1372
ATTORNEY FOR APPLICANTS

10/31/2005 AKELECH1 00000008 09681172

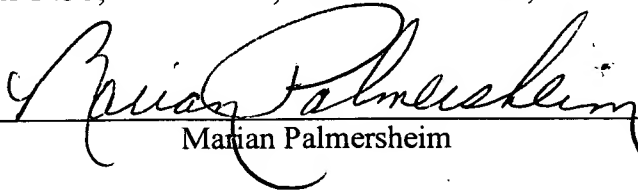
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Marian Palmersheim



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND
INTERFERENCES

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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APPLICANTS' BRIEF ON APPEAL TO THE BOARD

This is an appeal from the final rejection of the Examiner dated June 3, 2005, rejecting all of the claims pending in the case. This Brief is accompanied by the requisite fee set forth in §1.17(c).

REAL PARTY IN INTEREST

The real party in interest in this appeal is the assignee, Decisionmark Corp.

RELATED APPEALS AND INTERFERENCES

The application on appeal is not subject to, or an element in, any other appeal or interference proceeding within the U.S. Patent and Trademark Office.

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STATUS OF CLAIMS

Claims 9, 16 and 21-24 are pending, all claims have been finally rejected (claim 20 was cancelled by amendment after final), and all claims are on appeal.

STATUS OF AMENDMENTS

The Applicants have filed an amendment merely canceling claim 20 subsequent to the final rejection. This amendment is pending, but is proper after final and after appeal pursuant to 37 CFR 41.33 and 37 CFR 1.116, because it merely cancels a claim and reduces the issues for appeal.

SUMMARY OF THE CLAIMED SUBJECT MATTER

Without limiting the claims on appeal, the inventions are summarized below:

The claimed subject matter can be better understood when viewing Figure 1 of the application. Attention is directed to the linear array of tabs located along the bottom periphery of the electronic program guide, which is shown with the broadcast TV tab on the bottom being the one which is selected and, therefore, the content in the electronic program guide grid structure relates to broadcast TV. If another one of the tabs along the bottom were selected instead of broadcast TV, then the electronic program guide grid structure would show programming relating to that source of signals associated with that tab; e.g., satellite TV, cable TV, etc. Also, these tabs provide links to guides which are limited or dedicated to programming that is available at the location of the viewer.

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The Applicants will summarize the independent claims specifically:

Claim 9. An electronic programming guide system comprising:

a personal computer comprising a browser at a first viewer location; (See Figure 3 and paragraph 21, lines 3-5);

a computer system at a second location, coupled to said personal computer and said browser via a computer network; (see Fig. 3);

said browser displaying a guide (Fig. 1) comprising a plurality of linearly arranged tabs, (#108 Fig. 1) where each tab is a link to one of a plurality of views of an electronic programming guide;

where each of said plurality of views is associated with one of a plurality of sources of signals (see the tabs 108 on Fig. 1 which each show a different source of a signal; e.g. broadcast TV, cable TV, etc.);

wherein at least three of said plurality of sources of signals are broadcast TV, programming delivered over the internet, and satellite TV; (see tabs 108 on Fig. 1)

wherein said guide includes a two-dimensional array of programming cells where each cell represents a different time slot associated with a different television channel; (see Fig. 1);

wherein said plurality of linearly arranged tabs is disposed on a periphery of said two-dimensional array; (see tabs 108 on Fig. 1); and

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wherein each of said plurality of views is limited to sources of signals available at said first viewer location. (see paragraph 20 lines 5-9).

Claim 16 is summarized as follows:

16. A method of displaying programming information to a viewer comprising the steps of:

providing, to a personal computer user, an array of programming choices available to a viewer; (see Figs. 1 and 2);

changing a characteristic of said array in response to a selection, made by said personal computer user, of a tab from a plurality of linearly arranged tabs disposed along a peripheral edge of said array; (see paragraph 19 – last sentence);

changing display content associated with one of said plurality of linearly arranged tabs as a result of a prior action; (see paragraph 18);

wherein said prior action is a computer-generated signal representative of a prior viewing selection by a viewer; (also see paragraph 18);

wherein said prior action further comprises a user selection among a plurality of user preferences; (also see paragraph 18);

wherein said prior action further comprises a duration characteristic of a prior viewing selection by said viewer; (see paragraph 18 lines 4-10);

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providing location information representative of a geographic location of said viewer and changing display content associated with one of said plurality of linearly arranged tabs based upon said location information; and (see paragraph 20 lines 5-9);

wherein each of said plurality of linearly arranged tabs is dedicated to one of a plurality of sources of programming available at said geographic location. (see Fig. 1 #108).

GROUND OF REJECTIONS TO BE REVIEWED ON APPEAL

1. Whether claims 9 and 24 have been properly rejected under 35 U.S.C. §103 (a) as being over Lawler in view of Shoff et al.
2. Whether claims 16 and 21-23 have been properly rejected under 35 U.S.C. §103 (a) as being over Lawler in view of Shoff et al.

ARGUMENT

The appellant contends the following with respect to each ground of rejection listed above.

1. **Whether claims 9 and 24 have been properly rejected under 35 U.S.C. §103 (a) as being over Lawler in view of Shoff et al.**

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Independent claim 9 and dependent claim 24, which depends from claim 9, are easily distinguishable from the Lawler and Shoff references. Claim 9 includes, among others, the following limitations:

9. An electronic programming guide system comprising:
 - a personal computer comprising a browser at a first viewer location;
 - a computer system at a second location, coupled to said personal computer and said browser via a computer network;
 - said browser displaying a guide comprising a plurality of linearly arranged tabs, **where each tab is a link to one of a plurality of views** of an electronic programming guide;
 - where each of said plurality of views is associated with one of a plurality of sources of signals;**
 - wherein at least three of said plurality of sources of signals are broadcast TV, programming delivered over the internet, and satellite TV;**
 - wherein said guide includes a two-dimensional array of programming cells where each cell represents a different time slot associated with a different television channel;

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wherein said plurality of linearly arranged tabs is disposed on
a periphery of said two-dimensional array; and

**wherein each of said plurality of views is limited to sources
of signals available at said first viewer location.** (emphasis added)

The Applicants believe that the cited Lawler and Shoff references fail to teach the above bolded limitations. On page 3 of the final office action, the Examiner correctly admits that Lawler does not teach an electronic program guide (EPG) with tabs linked with views which are associated with broadcast TV, programming delivered over the internet and satellite TV. However, the Examiner then incorrectly asserts that the Shoff reference teaches that each of the views is associated with one of a plurality of sources of signals. The discussion below will show that what Shoff discloses is something far different. The Examiner is not confused about what is meant by VIEWS because the Examiner clearly understood that the views were linked to tabs on the EPG. In reference to the Lawler reference, the Examiner stated on the bottom of page two in the final action:

“a browser displaying a guide comprising a plurality of
linearly arranged tabs, where each tab is a link to one of
a plurality of views (*time view, category view*)”

The Examiner is clearly understanding and saying that the plurality of views are TIME and CATEGORY views. It is correct that Lawler clearly shows in Figure 3C tabs for such views. However, the claim language in claim 9 states that the views are for

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SOURCES OF PROGRAMMING and more particularly, broadcast TV, programming delivered over the internet and satellite TV. Moreover, claim 9 limits these views to sources of signals available at the first viewer location. These last limitations are key and are completely absent from the Shoff reference.

Shoff teaches an interactive entertainment system which combines regular video programs with interactive supplemental content on A DISTRIBUTION NETWORK. Shoff can add its supplemental interactive content to content which is normally non-interactive. A set top box at the viewer's location receives a combined interactive signal and presents the same along with AN EPG. What Shoff does not teach is any notion of providing multiple views of an EPG where each view is associated with one of a plurality of sources of signals. This is the case because Shoff only has one network distribution system, and there is only one source of signals. The make-up of the one network in Shoff could be wireless (broadcast), satellite, or a fiber optic cable network or a combination of any of such networks. This is irrelevant because the user in the Shoff system only deals with one distribution system and does not need or benefit from knowing the details of the infrastructure used to deliver the signal.

The reference in Shoff to the arrangement of the content of the EPG is most telling. Shoff does discuss the EPG; however, Shoff merely states in column 4, lines 35-41: "The EPG provides an on-screen listing of various programs or program titles. The listing is organized in a *predetermined* arrangement that is displayed on the television." (emphasis added)

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This is consistent with the true teachings and focus of Shoff -- the marriage of non-interactive content with supplemental interactive content.

Since Shoff does not teach, suggest or is not even concerned with how the non-interactive content might be arranged in views based upon sources of signals, and further since the Examiner admits that Lawler also does not teach the same, then it is clear that the Lawler and Shoff references fail to establish a prima facie case of obviousness with respect to Claim 9. Since claim 24 adds additional limitations to claim 9, it, too, is patentable over Lawler and Shoff.

Irrespective of the above discussion describing how the prior art does not teach the claimed invention, the Examiner in the efforts to characterize Shoff as teaching much more than it does, thereby erred in taking official notice in the office action. The Examiner states the following on page 3, line 6 of the final office action:

“wherein each of said plurality of views is limited to sources of signal available at said first viewer location (It is inherent in a traditional broadcast or cable system, the sources of signal vary from location to location).”

It is unclear what the Examiner is stating here. However, it is clear what is NOT being stated. The Examiner is not stating what is inherent in any prior art reference, nor is the Examiner clearly stating even the type of system to which reference is made. Is it some system for broadcasting television or some type of electronic programming guide system?

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Is it a cable TV delivery system, or is it a cable TV electronic program guide? The Examiner appears to be taking official notice of some amorphous prior art, but cites no reference or makes no clear statement of the matter for which official notice is being taken. MPEP 2144.03 (B) states that if official notice is taken (which should be done only in limited circumstances), then the reasoning underlying the decision to take such notice must be clear and unmistakable. Here the assertion of the subject matter itself is not clear and unmistakable. So the reasoning for the assertion cannot be clear and unmistakable.

For these reasons, the rejection of claims 9 and 24 is believed to be improper.

**2. Whether claims 16 and 21-23, have been properly rejected under 35 U.S.C. §103
(a) as being unpatentable over Lawler in view of Shoff et al**

Claim 16 and claims 21-23, which depend from it, are method claims and contain the following limitation which is similar to the notions discussed above with respect to claim 9:

“Wherein each of said plurality of linearly arranged tabs is
dedicated to one of a plurality of sources of programming
available at said geographic location.”

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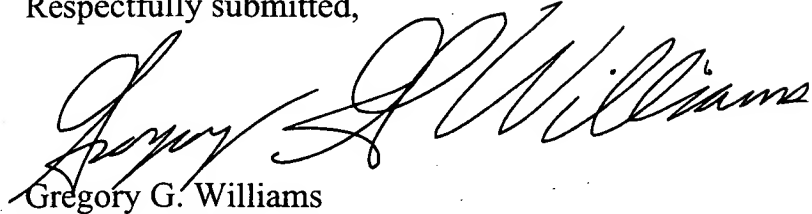
This claim limitation also is not taught by the cited Lawler and Shoff references. Lawler teaches an EPG with tabs; e.g., 102; however, it does not teach each of a plurality of tabs dedicated to one of a plurality of SOURCES OF PROGRAMMING. The tabs are not so dedicated. Moreover, Shoff does not teach the areas which are not taught by Lawler. Shoff again, as stated above with respect to claim 9, does not care about the arrangement of the EPG; it only says it is predetermined and may contain some information such as whether there is close captioning, stereo, etc. There is no need or motivation in Shoff to a suggestion of dedicating tabs to views as claimed in claim 16. When the combination of references fails to disclose, teach or even merely suggest the desirability of every claim limitation, then there is no prima facie case of obviousness with respect to the claimed invention. Applicant respectfully requests removal of the rejections on claims 16, 21-23.

In summary, Lawler teaches an EPG without a linear array of tabs dedicated to sources, and the Shoff reference is unconcerned with the way the sources are presented in an EPG. There is no motivation in Lawler or Shoff to combine the two references; and even if they were combined, they do not in combination teach all of the limitations of the claims on appeal.

Applicants hereby respectfully request allowance of the claims on appeal.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gregory G. Williams", written in a cursive style.

Gregory G. Williams
Simmons Perrine Albright & Ellwood, PLC
Third Floor Tower Place
22 South Linn Street
Iowa City, Iowa 52240

DATE 10-25-05

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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CLAIMS APPENDIX

Claim 9. An electronic programming guide system comprising:

a personal computer comprising a browser at a first viewer location;

a computer system at a second location, coupled to said personal computer and said browser via a computer network;

said browser displaying a guide comprising a plurality of linearly arranged tabs, where each tab is a link to one of a plurality of views of an electronic programming guide;

where each of said plurality of views is associated with one of a plurality of sources of signals;

wherein at least three of said plurality of sources of signals are broadcast TV, programming delivered over the internet, and satellite TV;

wherein said guide includes a two-dimensional array of programming cells where each cell represents a different time slot associated with a different television channel;

wherein said plurality of linearly arranged tabs is disposed on a periphery of said two-dimensional array; and

wherein each of said plurality of views is limited to sources of signals available at said first viewer location.

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Claim 16. A method of displaying programming information to a viewer comprising the steps of:

providing, to a personal computer user, an array of programming choices available to a viewer;

changing a characteristic of said array in response to a selection, made by said personal computer user, of a tab from a plurality of linearly arranged tabs disposed along a peripheral edge of said array;

changing display content associated with one of said plurality of linearly arranged tabs as a result of a prior action;

wherein said prior action is a computer-generated signal representative of a prior viewing selection by a viewer;

wherein said prior action further comprises a user selection among a plurality of user preferences;

wherein said prior action further comprises a duration characteristic of a prior viewing selection by said viewer;

providing location information representative of a geographic location of said viewer and changing display content associated with one of said plurality of linearly arranged tabs based upon said location information; and

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wherein each of said plurality of linearly arranged tabs is dedicated to one of a plurality of sources of programming available at said geographic location.

Claim 21. A method of claim 16 wherein said plurality of sources of programming comprises broadcast TV.

Claim 22. A method of claim 21 wherein said plurality of sources of programming further comprises satellite TV.

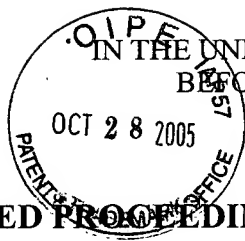
Claim 23. A method of claim 22 wherein said plurality of programming sources further comprises internet delivered programming.

Claim 24. A guide of claim 9 wherein said plurality of sources of signals represents all video programming sources available at said first viewer location.

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EVIDENCE APPENDIX

None



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RELATED PROCEEDINGS APPENDIX

There are no related proceedings associated with this appeal.